

**REMARKS**

Claims 1, 3-15, 17-28, 30-42, and 44-56 are pending and stand rejected. Independent claims 1, 15, 28, and 42 have been amended to more particularly point out and distinctly claim the invention. Harmonizing amendments have been made to dependent claims 3, 4, 8, 9, 17, 18, 22, 23, 30, 31, 35, 36, 44, 45, 49, and 50. Support for the amendments is in the claims as originally filed and throughout the specification but particularly in paragraphs [0026] – [0030] and [0035] – [0039].

The Office Action provisionally rejected claims 1, 15, 28, and 42 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 12, and 23 of copending application no. 11/328,702. Office Action at 2-7. As indicated in Applicant's February 18, 2008 Response, Applicant understands that, because the instant application was filed before application serial no. 11/328,702, this rejection will be withdrawn when the other rejections have been resolved. MPEP 104(1)(B)(2). Applicant believes that the other rejections have been resolved, as described below, and respectfully requests that this provisional rejection be withdrawn.

The Office Action rejected claims 1, 3-5, 15, 17-19, 28, 30-32, 42, and 44-46 under 35 USC 102(b) as being anticipated by an article entitled "Access Path Selection in a Relational Database Management System" (hereinafter referred to as "Access Path Selection"). Office Action at 7. Applicant respectfully disagrees.

Access Path Selection does not teach or suggest "determining that a stored actual access path cost for the access path exists , and, in response, substituting the stored actual access path cost for the estimated access path cost, the stored actual access path cost for the access path being a measured cost of executing the predicate using the access path," "measuring the actual cost of executing the predicates in the request," and "storing the measured actual costs as actual

access path costs,” as required by amended independent claims 1, 15, 28, and 42. In particular, Access Path Selection does not mention actual access path costs, where an actual access path cost is a measured cost of executing a predicate using the access path, but only discusses estimating access path costs using a cost formula:

The OPTIMIZER examines both the predicates in the query and the access paths available on the relations referenced by the query, and formulates a cost prediction for each access plan, using the following cost formula:

$$\text{COST} = \text{PAGE FETCHES} + W * (\text{RSI CALLS})$$

Because it does not teach or suggest actual access path costs, Access Path Selection does not hint at determining that a stored actual access path cost for the access path exists, where the stored actual access path cost is the measured cost of executing the predicate using the access path, as required by amended independent claims 1, 15, 28, and 42. Access Path Selection does not hint at substituting the stored actual access path cost for the estimated access path cost, as required by amended independent claims 1, 15, 28, and 42. Access Path Selection does not hint at measuring the actual cost of executing the predicates in the request, as required by independent claims 1, 15, 28, and 42. Access Path Selection does not hint at storing the measured actual costs as actual access path costs, as required by amended independent claims 1, 15, 28, and 42.

For these reasons, amended independent claims 1, 15, 28, and 42 are not anticipated by Access Path Selection. Claims 3-5, 17-19, 30-32, and 44-46 depend from one of claims 1, 15, 28, and 42 and are not anticipated by Access Path Selection for the same reason. Applicant respectfully requests that this rejection be withdrawn.

The Office Action rejected claims 6-9, 20-23, 34-36, and 48-50 under 35 USC 103(a) as being unpatentable over Access Path Selection in view of United States Patent No. 6,957,211 (hereinafter “Tyunelev”). Office Action at 9. Claims 6-9, 20-23, 34-36, and 48-50 depend from one of independent claims 1, 15, 28 and 42. The Office Action rejected claims 6-9, 20-23, 34-

36, and 48-50 relying on the same reasoning it used to reject the independent claims. As demonstrated above, Access Path Selection is missing several elements of the independent claims. Access Path Selection is missing the same elements from claims 6-9, 20-23, 34-36, and 48-50 and the Office Action does not argue that Tyunelev provides the missing elements. Accordingly, claims 6-9, 20-23, 34-36, and 48-50 are not obvious in view of the Office Action's combination of Access Path Selection and Tyunelev. Applicant respectfully requests that this rejection be withdrawn.

The Office action rejected claims 10-11, 24-25, 37-38, 41, 51-52, and 55-56 under 35 USC 103(a) as being unpatentable over Access Path Selection in view of Tyunelev and further in view of United States Patent No. 5,899,986 (hereinafter "Ziauddin"). Office Action at 11. Claims 10-11, 24-25, 37-38, 41, 51-52, and 55-56 depend from one of independent claims 1, 15, 28 and 42. The Office Action rejected claims 10-11, 24-25, 37-38, 41, 51-52, and 55-56 relying on the same reasoning it used to reject the independent claims. As demonstrated above, Access Path Selection is missing several elements of the independent claims. Access Path Selection is missing the same elements from claims 10-11, 24-25, 37-38, 41, 51-52, and 55-56 and the Office Action does not argue that Tyunelev or Ziauddin provides the missing elements. Accordingly, claims 10-11, 24-25, 37-38, 41, 51-52, and 55-56 are not obvious in view of the Office Action's combination of Access Path Selection, Tyunelev, and Ziauddin. Applicant respectfully requests that this rejection be withdrawn.

**SUMMARY**

Applicant contends that the claims are in condition for allowance, which action is requested. Applicant requests that any fees required with this submission be debited from deposit account number 50-4370.

Respectfully submitted,

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